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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005-85; FAR Case 2015-036; Item III; Docket No. 2015-0036, Sequence No. 1]

RIN 9000-AN14

Federal Acquisition Regulation; Updating Federal Contractor Reporting of Veterans' Employment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a final rule issued by the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS), which replaced the VETS-100 and VETS-100A Federal Contractor Veterans' Employment Report forms with the new VETS-4212, Federal Contractor Veterans' Employment Report form.

DATES: Effective: February 26, 2016.

Applicability: This rule applies to (1) solicitations and contracts awarded on or after the effective date: and (2) modifications on or after the effective date to existing contracts, if the contracts are otherwise being modified.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat on or before **[insert date 60 days after FEDERAL REGISTER publication date]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005-85, FAR Case 2015-036, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-036" Select the link "Comment Now" that corresponds with "FAR Case 2015-036". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2015-036" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW., 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-85, FAR Case 2015-036, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb,
Procurement Analyst, at 202-501-0650 for clarification of
content. For information pertaining to status or
publication schedules, contact the Regulatory Secretariat at
202-501-4755. Please cite FAC 2005-85, FAR Case 2015-036.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement a final rule issued by VETS of the DOL that was published in the Federal Register at 79 FR 57463 on September 25, 2014, which rescinded the regulations at 41 CFR part 61-250 and revised the regulations at 41 CFR part 61-300, which implemented the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA) and the Jobs for Veterans Act (JVA) (Pub. L. 107-288). VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. One of the main purposes of the DOL's rule was to revise the reporting requirement applicable to Government and subcontracts over the simplified acquisition threshold by changing the manner in which Federal contractors report on their employment of

veterans. DOL's final rule changed the name of the annual report required under those regulations to the Federal Contractor Veterans' Employment Report VETS-4212. Additionally, the FAR rule incorporates the revisions to certain definitions, the text of the reporting requirements clause included in Government contracts and subcontracts, and the methods of filing the annual report on veterans' employment covered by the new form. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements beginning with the annual report filed in 2015.

II. Discussion and Analysis

A. The VETS rule accomplished a number of revisions to the VEVRAA implementing regulations including the following:

1. Rescinded the regulations at 41 CFR part 61-250 that prescribed the reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003 because those regulations were obsolete.

2. Changed the manner in which Federal contractors report on their employment of veterans. The previous VETS-100 and VETS-100A Reports did not ask contractors to provide the total number of protected veterans in their workforces nor who were hired during the reporting period. VETS found it would be preferable for contractors to report the total number of protected veterans employed and hired rather than

the total number of veterans protected under each job category. Such data better assists contractors in complying with their affirmative action obligations under VEVRAA and in monitoring the success of their recruitment and outreach efforts to attract protected veterans. Accordingly, VETS revised the manner in which employment and hiring of protected veterans is reported.

3. Updated definitions. A previous rulemaking by DOL's Office of Federal Contract Compliance Programs (OFCCP) that was published in the Federal Register at 78 FR 58614 on September 24, 2013, updated the requirements pertaining to affirmative action and nondiscrimination obligations of contractors and subcontractors regarding special disabled veterans, veterans of the Vietnam Era, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and armed forces service medal veterans. The OFCCP rule updated appropriate terms for protected categories of veterans by defining "active duty wartime or campaign badge veteran" and "protected veteran" and rendering obsolete the term "other protected veteran". A prior FAR rule that implemented the OFCCP rule that was published in the Federal Register at 79 FR 43575 on July 25, 2014, adopted these updated terms at FAR 22.1301, Definitions, and in the FAR subpart 22.13 prescribed clauses at 52.222-35, Equal Opportunity for Veterans, and 52.222-37,

Employment Reports on Veterans. The VETS rule has adopted the updated terms from the OFCCP rule and has made conforming revisions.

4. Renamed the required annual report the "Federal Contractor Veterans' Employment Report VETS-4212" and updated methods of filing the report.

B. Following are the revisions required to the FAR text that implements the VEVRAA reporting requirements, as amended, in FAR subpart 22.13, the clause at 52.222-37, Employment Reports on Veterans, and related clauses:

1. FAR 22.1300, Scope of subpart. Removes the reference to the rescinded regulation at 41 CFR part 61-250.

2. FAR 22.1302, Policy; 22.1303, Applicability; 22.1304, Procedures; and 22.1306, Department of Labor notices and reports. Updates the title of the report from VETS-100 or VETS-100A to VETS-4212 in FAR 22.1302 through FAR 22.1304. Additionally, updates terms, instructional language, and internet links in FAR 22.1304 and 22.1306.

3. FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Updates the currency of clause dates.

4. FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). Updates the currency of clause dates.

5. FAR 52.222-37, Employment Reports on Veterans. Revises language in the clause to alphabetically order terms and conform to terms defined in FAR 22.1301, and provides updated instructional language and internet links.

6. FAR 52.222-38, Compliance with Veterans' Employment Reporting Requirements. Updates language and the VETS-4212 form number.

7. FAR 52.244-6, Subcontracts for Commercial Items. Updates the currency of clause dates.

C. This interim rule updates the OMB Control Numbers in FAR 1.106, OMB approval under the Paperwork Reduction Act. The information collections imposed by VEVRAA as amended, and the VEVRAA reporting requirements are managed by Department of Labor's Office of Federal Contract Compliance Programs and VETS and are cited in the FAR.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant

regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This interim rule is being issued to implement changes to 41 CFR parts 61-250 and 61-300 that were published in the Federal Register at 79 FR 57463 on September 25, 2014, by the Veterans' Employment and Training Service (VETS) of the Department of Labor (DOL).

The VETS rule revises the current regulations implementing 38 U.S.C. 4212. The VETS rule rescinded obsolete regulations at 41 CFR part 61-250, changed the manner in which Federal contractors report veterans' employment data, updated terminology, and revised the annual report, the report name, and methods of filing the report.

VETS used data in the VETS-100/100A Reporting System regarding reports on veterans' employment filed in 2012 to estimate the number of small entities that would be subject to its rule. The VETS rule applies to any industry represented by a Federal contractor with a contract of \$100,000 or more. Therefore, VETS used the Small Business Administration's "fewer than 500 employees" limit when making an across-the-board size standard classification for estimating purposes. VETS estimated that 15,000 Federal contractors will be subject to the reporting requirements of the rule and of that, VETS approximated that the number of small entities that would be subject to the rule would be 8,000 (approximately 53 percent of the total Federal contractors impacted by the rule).

This FAR rule does not add any new reporting, recordkeeping, or other compliance burdens. The FAR rule makes contracting officers and contractors aware of the VETS reporting requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA are not aware of any significant alternatives to the rule which would accomplish the stated objectives of implementing the VETS final rule, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of making any changes to the VETS rule, which has already been published for public comment and has taken effect as a final rule. There is no significant impact on small entities imposed by the FAR rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2015-036), in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) applies. The rule contains information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. However, the applicable information collections are derived

from the requirements of the 41 CFR part 61-300 regulations implementing the reporting requirements under VEVRAA; see detailed discussion in DOL's rule under the Paperwork Reduction Act section which was published in the Federal Register at 79 FR 57463 on September 25, 2014. OMB assigned OMB Control Numbers 1250-0004, OFCCP Recordkeeping and Reporting Requirements, 38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and 1293-0005, Federal Contractor Veterans' Employment Report.

V. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary as the effective date of the VETS final rule was October 27, 2014. Contractors and subcontractors are required to comply with the new reporting requirements beginning with their annual report filed in 2015, which for some contractors and subcontractors is after September 30, 2015. Any further delays in implementing this rule may impact contractors' and subcontractors' ability to comply with the new reporting requirements. The effective date is

set as February 26, 2016, to allow the Government to conform its procurement database. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: November 20, 2015.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory text, by—

a. Removing FAR Segment "22.13" and its corresponding OMB Control Number "1293-0005 and 1250-0004";

b. Removing FAR Segment "52.222-37" and its corresponding OMB Control Number "1293-0005"; and

c. Adding, in numerical sequence, FAR segments "52.222-37" and "52.222-38" and their corresponding OMB Control Numbers "1250-0004 and 1293-0005" in their places, respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Amend section 22.1300 by revising paragraph (e) to read as follows:

22.1300 Scope of subpart.

* * * * *

(e) The regulations of the Secretary of Labor (41 CFR parts 60-300 and 61-300).

4. Amend section 22.1302 by revising paragraph (b) to read as follows.

22.1302 Policy.

* * * * *

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a

contractor that has not submitted the required annual VETS-4212, Federal Contractor Veterans' Employment Report (VETS-4212 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 [Amended]

5. Amend section 22.1303 by removing from paragraph (c) "VETS-100A" and adding "VETS-4212" in its place.

6. Revise section 22.1304 to read as follows.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS-4212 Report, the contracting officer may—

(a) Query the Department of Labor's VETS-4212 Database via the Internet at <http://www.dol.gov/vets/vets4212.htm> under "Filing Verification"; and

(b) Contact the VETS-4212 customer support via e-mail at VETS-4212-customersupport@dol.gov for confirmation, if the proposed contractor represents that it has submitted the VETS-4212 Report and is not listed on the verification file.

7. Amend section 22.1306 by revising paragraph (b) to read as follows.

22.1306 Department of Labor notices and reports.

* * * * *

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans, unless all of the terms of the clause at 52.222-35, Equal Opportunity for Veterans, have been waived see 22.1305). The contractor and subcontractor must file VETS-4212, Federal Contractor Veterans' Employment Report (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.212-5 by revising the date of the clause and paragraphs (b) (31) and (e) (1) (viii) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2016)

* * * * *

(b) * * *

(31) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

* * * * *

(e) (1) * * *

(viii) 52.222-37, Employment Reports on Veterans
(FEB 2016) (38 U.S.C. 4212).

* * * * *

9. Amend section 52.213-4 by revising the date of
clause and paragraphs (a) (2) (viii) and (b) (1) (vi) to read as
follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Items).**

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) (FEB 2016)

(a) * * *

(2) * * *

(viii) 52.244-6, Subcontracts for Commercial
Items (FEB 2016)

* * * * *

(b) * * *

(1) * * *

(vi) 52.222-37, Employment Reports on Veterans
(FEB 2016) (38 U.S.C. 4212) (Applies to contracts of \$150,000
or more).

* * * * *

10. Amend section 52.222-37 by—

a. Revising the date of the clause;

b. Revising paragraphs (a), (b) (1), (b) (2), and

(c);

c. Removing from paragraph (d) "submit VETS-100A" and adding "file VETS-4212" in its place; and

d. Removing from paragraph (f) "VETS-100A" and adding "VETS-4212" in its place.

The revisions read as follows.

52.222-37 Employment Reports on Veterans.

* * * * *

EMPLOYMENT REPORTS ON VETERANS (FEB 2016)

(a) Definitions. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) * * *

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

* * * * *

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

* * * *

11. Amend section 52.222-38 by revising the date of the provision and removing from the last sentence "submitted the most recent VETS-100A" and adding "filed the most recent VETS-4212" in its place.

The revision reads as follows.

52.222-38 Compliance with Veterans' Employment Reporting Requirements.

* * * *

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (FEB
2016)

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12. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(viii) to read as follows.

52.244-6 Subcontracts for Commercial Items.

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SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2016)

* * * *

(c)(1) * * *

(viii) 52.222-37, Employment Reports on Veterans
(FEB 2016) (38 U.S.C. 4212).

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[BILLING CODE 6820-EP]

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